81-101

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ALEXANDER L. STEVAS,
CLERK

No. _____

In the Supreme Court of the United States
October 1980 Term

HAROLD LEWIS
Plaintiff-Appellant

vs.

COOK COUNTY DEPARTMENT OF PUBLIC AID, ILLINOIS DEPARTMENT OF PUBLIC AID and ILLINOIS CIVIL SERVICE COMMISSION
Defendants-Appellees

Supplement to Appendix Petition For Writ of Certiorari To The United States Court of Appeals For The Seventh Circuit

HAROLD LEWIS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

HAROLD LEWIS Plaintiff, v. COOK COUNTY DEPARTMENT OF PUBLIC AID, ILLINOIS DEPARTMENT OF PUBLIC AID, ILLINOIS CIVIL SERVICE COMMISSION, REPRESENTATIVE BY THE ATTORNEY GENERAL OF THE STATE OF ILLINOIS, Defendants.	)	No. 78 C 989

MEMORANDUM OPINION AND ORDER

This matter is before the Court on a Motion to Dismiss pursuant to Rule 12(b), Federal Rules of Civil Procedure, ("F.R.Civ.P."), filed by defendants Illinois Department of Public Aid ("IDPA") and Illinois Civil Service Commission (the "Commission") and on a Motion to Dismiss filed by the Attorney General of the State of Illinois on his own behalf and on behalf of the Cook County Department of Public Aid.

Plaintiff's Complaint alleges violations of federally guaranteed rights. Jurisdiction is presumably invoked u ler 28 U.S.C. §1343.

I. DEFENDANTS' MOTION TO DISMISS THE ATTORNEY GENERAL AND THE COOK COUNTY DEPARTMENT OF PUBLIC AID AS PARTIES

The Cook County Department of Public Aid was abolished as a separate unit and merged into IDPA in 1974, Ill. Rev. Stat. ch. 23, §12-18.1(2). It thus no longer exists as a separate entity.

Accordingly, the Motion to Dismiss the Cook County Department of Public Aid as a defendant is granted.

The list of defendants named in plaintiff's Complaint ends with "Representative (sic) by the Attorney General of Illinois." This characterization may describe the Attorney General as counsel for defendants. If, however, it purports to name the Attorney General as a party, then he asserts he should be dismissed as a defendant. In support of his contention the Attorney General argues that his sole role in this matter has been as counsel for the other defendants. Plaintiff makes no allegations of misconduct on the part of the Attorney General in his Complaint. All of plaintiff's statements concerning the Attorney General refer to him in his capacity as counsel for the other defendants.

Accordingly, the Motion to Dismiss the Attorney General of the State of Illinois as a defendant is granted.

II. MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION

Defendants IDPA and the Commission move to dismiss on the ground that this Court lacks jurisdiction over the subject matter of this suit. These defendants' motion must be viewed in light of the important policy that pro se litigants, such as plaintiff here, should not be denied the opportunity to state a civil rights claim because of technicalities. Wherever possible, such litigation should be decided on the merits. Kauffman v. Moss, 420 F.2d 1270, 1276 (3rd Cir. 1970); Heckart v. Pate, 52 F.R.D. 224 (N.D. Ill. 1971).

Defendants assert that this Court lacks subject

matter jurisdiction because plaintiff fails to allege a federal question and a jurisdictional amount in excess of $10,000 as required by 28 U.S.C. §1331(a) and (b). This Court does not agree.

This Court has jurisdiction over the claim if the Complaint raises a federal question, even though plaintiff does not allege a specific jurisdictional statute. Mirin v. Taxi Cab of Clark Co. Nevada, 441 F.2d 1123, 1125 (9th Cir.), cert. denied, 404 U.S. 914 (1971). However, jurisdiction is presumably invoked pursuant to 28 U.S.C. §1343(3).

Section 1343 vests jurisdiction in this Court to redress the deprivation, not only of federal statutory civil rights, but also of Fourteenth Amendment rights. Davis v. Foreman, 251 F.2d 421, 422 (7th Cir.), cert. denied, 356 U.S. 974 (1958). When suit is brought pursuant to Section 1343 it is not necessary that the Complaint set out the particular portion of the Constitution or law of which plaintiff claims he was deprived. Gregg v. State of Tennessee, 425 F.Supp. 394, 395 (E.D. Tenn. 1976). Further, Section 1343 as amended does not impose a jurisdictional amount requirement. See also Jones v. Alfred H. Mayer Co., 392 U.S. 362 (1968).

Plaintiff asserts that he was unjustly removed from his position with IDPA and that he has been unable to "secure the attention of an impartial judge." Broadly construed, these statements allege a denial of plaintiff's federal rights. Because a dismissal for lack of subject matter jurisdiction is not justified unless it appears to a legal certainty that the federal issue is wholly insubstantial and frivolous, these allegations are sufficient to preclude dismissal. Snyder v. Board of Trustees of University of Illinois, 286 F.Supp. 927, 931 (N.D. Ill. 1968); Soglin v. Kauffman, 418 F.2d 163 (7th Cir. 1969).

Accordingly, the Motion to Dismiss for lack of subject matter jurisdiction filed by defendants IDPA and the Commission is denied.

III. MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

In considering defendants' Motion to Dismiss pursuant to Rule 12(b)(6), F.R.Civ.P., all the allegations of the Complaint are to be taken as true and construed in a light most favorable to plaintiff. Haines v. Kerner, 404 U.S. 519 (1972).

Nevertheless, the Complaint must still set forth factual allegations. Plaintiff's mere conclusory allegations here fail to show any facts which would reveal that defendants have deprived plaintiff of any rights secured to him by the United States Constitution or other federal law. Therefore plaintiff's allegations are insufficient to state a claim upon which this Court can grant relief. Admas v. Pate, 445 F.2d 105 (7th Cir. 1971); Heckart v. Pate, supra.

It appears beyond a doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

Accordingly, the Motion to Dismiss for failure to state a claim upon which relief can be granted, filed by defendants IDPA and the Commission, is granted.

IV. CONCLUSION

The Motion to Dismiss the Cook County Department of Public Aid as a defendant is granted.

The Motion to Dismiss the Attorney General of the State of Illinois (sued herein as "Representative by the Attorney General of the State of Illinois") as a defendant is granted.

The Motion to Dismiss for lack of subject matter jurisdiction filed by defendants Illinois Department of Public Aid and the Illinois Civil Service Commission is denied.

The Motion to Dismiss for failure to state a claim upon which relief can be granted filed by defendants Illinois Department of Public Aid and the Illinois Civil Service Commission is granted.

ENTER: _____

ALFRED Y. KIRKLAND
JUDGE

DATED: December 13, 1978

Unpublished Per Curiam Order
JUDGMENT -- WITHOUT ORAL ARGUMENT

UNITED STATES COURT OF APPEALS

For the Seventh Circuit
Chicago, Illinois 60604

November 7, 1980

Before

Hon. Robert A. Sprecher, Circuit Judge
Hon. William J. Bauer, Circuit Judge
Hon. Richard D. Cudahy, Circuit Judge

HAROLD LEWIS, Plaintiff-Appellant,	)	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division No. 78-C-989 Judge Alfred Y. Kirkland
No. 79-1051 vs.	)	
COOK COUNTY DEPARTMENT OF PUBLIC AID, ILLINOIS DEPARTMENT OF PUBLIC AID and ILLINOIS CIVIL SERVICE COMMISSION, Defendants-Appellees.	)	

This cause came before the Court for decision on the record from the United States District Court for the Northern District of Illinois, Eastern Division.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED, with costs, in accordance with the order of this court entered this date.